

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**CRITICAL AIR RESPONSE ENTERPRISES, LLC,**

**Plaintiff,**

**vs.**

**Case No. 1:12-cv-356 WDS/ACT**

**THE NEW MEXICO DEPARTMENT OF HEALTH,  
et al.,**

**Defendants.**

**ORDER TO SHOW CAUSE**

This matter comes before the Court sua sponte. It appears the Court lacks jurisdiction over several of Plaintiff's claims and the Court hereby affords Plaintiff the opportunity to show cause why the following claims should not be dismissed.

**(1) Claims for declaratory judgment**

The Court proposes to dismiss all claims for declaratory judgment because it appears Plaintiff lacks standing either to seek a declaration that the Department of Health's regulations, practices, or policies are unlawful, or to prevent their future enforcement. *See Buchwald v. Univ. of N.M. Sch. of Med.*, 159 F.3d 487 (10th Cir. 1998).

**(2) Claims against the Department of Health**

The Court proposes to dismiss all claims against the Department of Health. As an apparent arm of the State of New Mexico, the Department of Health is immune from suit under the Eleventh Amendment. *See Buchwald*, 159 F.3d 487.

The Plaintiff may, within 20 days from the date of this Order to Show Cause, file a memorandum demonstrating why its claims for declaratory judgment and its claims against the Department of Health should not be dismissed. If Plaintiff files a memorandum, Defendants may

file a response memorandum within 20 days thereafter. Memoranda shall not exceed ten pages.

If Plaintiff does not file a memorandum within 20 days from the date of this Order to Show Cause, the Court will dismiss the above claims sua sponte.

  
\_\_\_\_\_  
**W. DANIEL SCHNEIDER**  
**UNITED STATES MAGISTRATE JUDGE**